

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

JIMMIE MCOY III,

Plaintiff,

vs.

Case No. CIV-23-057-JFH-JAR

BARTON TAYLOR, et. al.,

Defendants.

**REPORT OF REVIEW OF FACTUAL BASIS OF CLAIMS
ASSERTED IN CIVIL RIGHTS COMPLAINT
PURSUANT TO 42 U.S.C. SECTION 1983**

COMES NOW Darrell L. Moore, Attorney for Defendants, and hereby certifies as follows:

- I have received the attached Court Ordered Special Report;
- I have electronically filed the same with this Court; and,
- I have provided the Plaintiff a copy of this report as shown in my Certificate of Service, attached to the end of this document.

Respectfully submitted,
Defendants



DARRELL L. MOORE, OBA #6332
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vs.

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PURSUANT TO 42 U.S.C. SECTION 1983**

COME NOW the officials in charge of Davis Correctional Facility (“DCF”) and in accordance with the Order issued by the Court on May 16, 2023 [Doc.#15] directing the preparation of a *Special Report* do submit herein a written report of review of the subject matter of the complaint filed by Inmate McCoy in the above styled action. A review was made of the above styled case and the following was ascertained and determined:

INITIAL STATEMENT

Plaintiff Jimmie McCoy, III, ODOC# 796101, appears pro se. Plaintiff McCoy is an inmate in the custody of the Oklahoma Department of Corrections. *See Ex. 1, Oklahoma Department of Corrections OK Offender Lookup, Jimmie McCoy III, DOC 796101.* Mr. McCoy is presently housed at Davis Correctional Facility, Holdenville, Oklahoma pursuant to a contract between CoreCivic, Inc., and the Oklahoma Department of Corrections. CoreCivic, Inc., owns and operates the Davis Correctional Facility and Defendants Taylor and Martinez were employees of CoreCivic, Inc., at the Davis Correctional Facility.

CLAIMS MADE BY PLAINTIFF

Claim 1: Plaintiff asserts that facility staff subjected him to use of excessive force.

Claim 2: Plaintiff asserts he was not fed.

Claim 3: Plaintiff asserts Defendants failed to protect him when he was celled with a member of the Hoover Crips gang.

INVESTIGATION

For purposes of completing this report, the undersigned spoke with appropriate staff members at Davis Correctional Facility to include security staff, medical staff, and the facility's Grievance Coordinator.

Grievance Records and an incident report for an incident on January 10, 2023, were reviewed and are attached to this Report. Inmate McCoy was housed in the maximum-security housing unit at Davis Correctional Facility. On January 10, 2023, staff were attempting to move inmate McCoy to a different housing assignment. Inmate McCoy was un-cooperative and began to threaten staff. As a result, staff placed inmate McCoy onto the floor in an attempt to gain compliance. Eight staff members were present and a Nurse from the facility medical team was present. An incident report was prepared and is attached to this report as Exhibit 2.

ADMINISTRATIVE REMEDIES

An administrative remedies grievance policy is available for inmate use at Davis Correctional Facility. Davis Correctional Facility follows the Oklahoma DOC administrative remedies policy. *See Exhibit 3, DOC OP-090124, attached hereto; see also Exhibit 4, Affidavit of Terry Underwood, Grievance Coordinator, ¶3.*

The Oklahoma DOC administrative remedies policy first requires an inmate to attempt to resolve any issue through informal resolution. This is done by the inmate submitting a Request to Staff to the appropriate staff member. If the inmate is not satisfied with the response from the

staff member, he must then file a formal grievance, attaching to the grievance the Request to Staff with the response from the staff member. *See Exhibit 3, DOC OP-090124.*

If an inmate remains unsatisfied following the filing of the grievance, and the grievance response, the final step directs an inmate to appeal the matter to the Oklahoma DOC's Administrative Review Authority. The ruling of the administrative review authority or chief medical officer is final and concludes the administrative remedy process for inmates within the jurisdiction of the Oklahoma Department of Corrections. Only then will an Oklahoma DOC inmate have satisfied the exhaustion of internal administrative remedies required by Oklahoma Statute, 57 O.S. § 564. *See Exhibit 3, DOC OP-090124, ¶VII, Appeal Process and Procedure.*

Plaintiff McCoy's use of the Administrative Remedies Process:

Ms. Underwood, the Davis facility's Grievance Coordinator, has reviewed the facility's records and logs regarding filings by Mr. McCoy at the Davis Correctional Facility. According to Ms. Underwood, he filed four (4) grievances following the January 10, 2023 incident that are related to the allegations he has brought forward to the District Court in his Complaint. *See Exhibit 4, Affidavit of Terry Underwood, Grievance Coordinator, ¶4, 5.*

A review of these grievances indicates that none of Inmate McCoy's grievance submissions were properly submitted. *See Exhibit 4, Affidavit of Terry Underwood, Grievance Coordinator, ¶6-9.*

Grievance No. 2023-1001-0021-G was dated by Mr. McCoy January 16, 2023, and was received in the Grievance Coordinator's office on January 18, 2023. The grievance was related to Mr. McCoy's removal from his assigned cell and placement in segregation on January 10, 2023. The grievance was returned unanswered to Mr. McCoy on January 19, 2023 and the Return Memorandum noted the deficiencies. The Grievance Coordinator also noted on the Return Memorandum that Mr. McCoy could correct the grievance and resubmit it within 10 days

as provided for by policy OP-090124. However, Mr. McCoy did not correct and resubmit and therefore did not exhaust administrative remedies. *See Exhibit 4, Affidavit of Terry Underwood, Grievance Coordinator, ¶6; see also Exhibit 5, grievance records, pages 1-5.*

Grievance No. 2023-1001-0022-G was also dated by Mr. McCoy January 14, 2023, and was received in the Grievance Coordinator's office on January 18, 2023. Mr. McCoy had again attached an unanswered Request to Staff form in support of the submitted grievance. The grievance was related to Plaintiff's complaints regarding the incident on January 10, 2023. The grievance was returned unanswered on January 19, 2023. The Return Memorandum noted the deficiencies and told Mr. McCoy that he could modify and properly re-submit the corrected grievance within ten (10) days. However, he did not do so and therefore did not exhaust administrative remedies. *See Exhibit 4, Affidavit of Terry Underwood, Grievance Coordinator, ¶7; see also Exhibit 5, grievance records, pages 6-11.*

Grievance No. 2023-1001-0035-G was dated by Mr. McCoy as January 24, 2023, and was received in the Grievance Coordinator's office on January 25, 2023. Mr. McCoy had submitted with the grievance an *Inmate Request* but not a completed and answered *Request to Staff*. On the face of the Inmate Request form, every inmate is advised that this form is not utilized for exhaustion of administrative remedies; you must use the "Inmate/Offender Grievance Process Request to Staff" for those issues. The submitted grievance was related to Mr. McCoy having been removed from his cell on January 10, 2023, as well as his movement to and placement in segregation. The grievance was returned unanswered to him on February 6, 2023 with a return memorandum that noted the deficiencies. He was told he would be afforded the opportunity to re-submit a corrected grievance within ten (10) days, but he did not do so and did not exhaust administrative remedies. *See Exhibit 4, Affidavit of Terry Underwood, Grievance Coordinator, ¶8; see also Exhibit 5, grievance records, pages 12-15.*

Then, after he had filed this lawsuit, Mr. McCoy submitted Grievance No. 2023-1001-0083-G. That grievance was dated by Mr. McCoy as March 5, 2023, and was received in the Grievance Coordinator's office on March 7, 2023. In the grievance, Mr. McCoy raised issues regarding his removal from his assigned cell on January 10, 2023, and he asked to be transferred to the Oklahoma State Penitentiary. When the grievance was reviewed, it was noted that Mr. McCoy had attached a *Request to Staff* to his grievance that had been answered by staff. In the Request to Staff, Mr. McCoy asserted the misconduct charge written on January 10, 2023, was false since he did not hit the officers involved. The Request to Staff was answered on February 28, 2023, by Chief of Security Brown. Chief Brown stated, "Disciplinary actions are addressed through the appeal process." The grievance was returned unanswered to Mr. McCoy on May 1, 2023. The return memorandum was dated April 4, 2023, and specifically noted the grievance's deficiencies. Since the grievance had not been timely submitted and it raised issues that were not properly grievable under the policy, Mr. McCoy was not told he could correct and re-submit the grievance. He did not exhaust administrative remedies as to any of the issues he raised in the grievance. And this grievance was filed after he had filed his lawsuit. *See Exhibit 4, Affidavit of Terry Underwood, Grievance Coordinator, ¶9; see also Exhibit 5, grievance records, pages 16-20.*

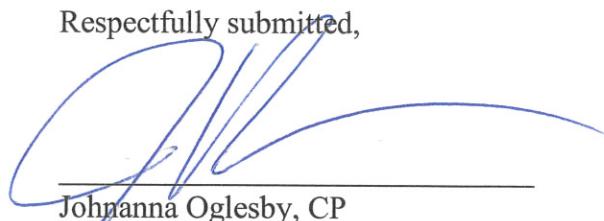
ACTION TAKEN OR RECOMMENDED

No further action is recommended at this time from the Davis Correctional Facility. It appears from the incident report records that the security staff actions were appropriate. Mr. McCoy threatened to kill a staff member and was un-cooperative during his movement. Administrative remedies were available to Mr. McCoy. He began the administrative remedies grievance process but did not properly follow the process through to successful conclusion as to any of the issues or claims he has now brought forward to the District Court.

OTHER CASES PENDING

None by Plaintiff involving the parties to this present matter.

Respectfully submitted,



Johnanna Oglesby, CP
Special Report Coordinator for
DCF/CCA

STATE OF OKLAHOMA)
) SS:
COUNTY OF MAYES)

Before me, the undersigned authority, personally appeared the Affiant herein, who after being duly sworn on oath, deposed and stated as follows:

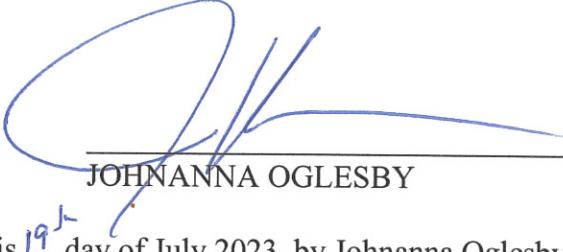
1. My name is Johnanna Oglesby. I am over the age of twenty-one years and am otherwise competent to testify in this matter.

2. I am a Certified Paralegal. I am the Special Report Coordinator for Corrections Corporation of America and Davis Correctional Facility.

3. Pursuant to this Court's Order, and at the request of the Administration of Davis Correctional Facility, Holdenville, Oklahoma, I have prepared the foregoing special report in the case of McCoy vs. Barton-Taylor, et. al., in the United States District Court for the Eastern District of Oklahoma, CIV-23-057-JFH-JAR

4. The information set forth therein is true, complete, and correct to the best of my knowledge, information and belief.

Further affiant sayeth naught.



JOHNANNA OGLESBY

Subscribed and sworn to before me this 19th day of July 2023, by Johnanna Oglesby.



My commission expires: 6/25/2026
My commission number: 02010855



Linda McKinney

NOTARY PUBLIC

Certificate of Service

I hereby certify that on July 20, 2023, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

I hereby certify that on July 20, 2023, I served the attached document by regular US Mail on the following, who are not registered participants of the ECF System:

Jimmie McCoy, III
DOC 796101
Davis Correctional Facility
6888 E. 133rd Rd.
Holdenville, OK 74848



DARRELL L. MOORE